

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4495 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SH CHAUHAN

Versus

ADDITIONAL SALES TAX COMMISSIONER

Appearance:

MR AS SUPEHIA for Petitioner

MR VB GHARANIA, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/04/99

ORAL JUDGEMENT

1. In this special civil application, notice was issued to the respondents on 26-6-1997 and ad-interim relief has also been granted in favour of the petitioner. Thereafter this matter was placed for admission on 17th September, 1997 and the Court has rightly admitted it. The respondents even after admitting this petition have not cared to file reply to the special civil application though they had to their credit more than one year and

six months. So whatever averments made in the special civil application stand uncontroverted and as such are to be taken as admitted by the respondents and accordingly the same are taken to be admitted by the respondents.

2. The averment made by the petitioner is that the matter for cancellation of the higher pay given to the petitioner and as a result thereof to recover whatever amount paid to him in excess, is pending for decision before the respondent No.1 but the respondent No.2 has passed the impugned order who has no competence or any authority.

3. Earlier the petitioner has come up before this Court and the writ petition filed by him being special civil application No.72/96 was decided on 30th January, 1996 and the order impugned therein of the cancellation of the order passed for giving to the petitioner the higher pay scale and the consequential order of the recovery of excess amount paid, has been set aside. Liberty was given to the respondents to pass fresh order after giving notice and opportunity of hearing to the petitioner.

4. In this case notice was given to the petitioner by the respondent No.1, copy of which is there on the record as annexure 'B' at page no.11 and the hearing was fixed on 24th April, 1996. On 24th April, 1996, the petitioner remained personally present for hearing before the respondent No.1 and he was heard. It is the case of the petitioner that no order has been passed by the respondent No.1 and the respondent No.2 has passed this order and immediately on receipt of the same, he made a representation to the respondent No.2 and that too has also not been decided. In view of these admitted facts, the orders of the respondent No.2. annexures 'D' and 'E' cannot be allowed to stand.

5. In the result, this special civil application succeeds and both the orders of the respondent No.2, annexures 'D' and 'E' are quashed and set aside. The respondent No.2 is directed to pay Rs.2000/- as costs of this petition to the petitioner. However, it is open to the State of Gujarat to hold an inquiry against the respondent No.2 and if in case it is found that he has committed an error or mistake in passing of this order, this amount of costs may be recovered from the said officer. This decision may not be taken to be as if this court has finally concluded the issue. It is open to the Secretary of the Department concerned, if he so desire, to take appropriate proceedings for cancellation of the

earlier order passed by the department of giving the higher pay scale to the petitioner and if he considers that it is erroneously given to the petitioner then after giving notice and opportunity of hearing to the petitioner, he may pass appropriate order. Rule is made absolute in the aforesaid terms.

zgs/-